



DATE: January 8, 2024

TO: Honorable Mayor and Members of the City Council through City Manager

FROM: Jeff Schach, Fire Chief
Jessica Power, Fire Marshal

SUBJECT: Introduction (First Reading) of an Ordinance of the City of Petaluma City Council Establishing a Process for Hazardous Vegetation and Rubbish Inspection and Abatement for Wildfire Safety

RECOMMENDATION

It is recommended that the City Council approve the introduction of a regular ordinance establishing a process for abatement for hazardous vegetation and rubbish inspection and abatement for wildfire safety.

BACKGROUND

For over 36 years, the City of Petaluma has conducted an aggressive program for abatement of hazardous vegetation for wildfire safety without having an explicit hazardous vegetation abatement ordinance. Each year, the Council has declared that weeds growing upon parcels of public and private property are a public nuisance requiring abatement, ordered abatement of said hazardous vegetation, and finally ordered the unpaid bills be sent to the assessor.

The clearing of public and private property, depending on weather, must be accomplished by mid-May or early June of any given year and maintained until the first major rains of the fall.

DISCUSSION

The California Government Code offers two avenues for cities to address overgrown vegetation and rubbish on private property, specifically for fire protection purposes, and provides a mechanism to place liens on properties that do not comply voluntarily. The first approach involves Section 39501 of the Government Code, allowing cities to establish their own procedures for removal through the enactment of an ordinance. For cities without an existing hazardous vegetation abatement ordinance, the second method involves adhering to the process outlined in Government Code Sections 39520 through 39703.

In the case of Petaluma, lacking a pre-existing hazardous vegetation abatement ordinance, the City had to follow the procedural guidelines set forth in Sections 39520-39703. However, the introduction and adoption of the proposed ordinance aim to formalize and codify the City's hazardous vegetation abatement process. Consequently, this will eliminate the necessity to navigate the Government Code's hazardous vegetation abatement process in the future.

The Government Code's hazardous vegetation abatement process requires a three-step process with City Council.

Step 1. City Council adopts a resolution declaring weeds and rubbish a public nuisance on specific addresses. (Govt. Code Section 39561)

- Staff mail notices to all addresses notifying them of the resolution, letting them know that they need to abate their residence and if not, the City will and lien their property for those costs, and notifying them of a public hearing to contest this action. (Govt. Code Section 39567.1)

Step 2. City Council conducts a public hearing to hear objections from property owners. (Govt. Code Section 39568)

- After this hearing, the City and its contractor have the authority to remove weeds and rubbish on those residence's property. (Govt. Code Section 39572) Contractors perform the abatement for those properties that still have overgrown vegetation.

Step 3. City Council conducts a hearing on placing liens on those properties where the City performed weed and rubbish abatement. These liens become special assessments on the property. Which the County is able to collect for the City. (Govt. Code Sections 39574, 39576-29578)

- Notification on the lien requires the City to place the specific costs of each abatement near Council chambers for at least 3 days prior to the hearing. (Govt. Code Section 39575)

Proposed Ordinance Differences than the Government Code's Hazardous Vegetation Abatement Process

The proposed ordinance is the same process that the Government Code outlines except that the ordinance combines steps 1 and 2 above into a single hearing and requires the City to perform additional noticing to the nuisance properties, as explained in greater detail below. Accordingly, the proposed ordinance is more efficient (which will reduce staff time) and provides more due process to the nuisance properties (which may result in more voluntary compliance) than the Government Code's hazardous vegetation abatement process.

The proposed ordinance is more efficient than the Government Code's process as it combines steps 1 and 2 into a single hearing. Under the Government Code's hazardous vegetation abatement process, Council will pass a resolution declaring specific properties a public nuisance and only then will staff send the letters to those properties informing them that they have been declared public nuisances. This does not provide the property owners with the ability to dispute the specific public nuisance finding. Rather, the proposed ordinance now declares generally that overgrown vegetation on all properties year-round is a public nuisance. The year-round public

nuisance is in alignment with the adopted California Fire Code Section 304.1.2 and Section 1103.2.4 which prohibits combustible waste material creating a fire hazard on vacant lots or open space and Petaluma Municipal Code Section 1.10.075 which declares overgrown vegetation and weeds on properties a public nuisance. Staff under the proposed ordinance will then send letters to those specific properties that have hazardous vegetation on their property in each Spring which informs them that they are currently a public nuisance and providing them a hearing date to contest those findings. This will save staff time and expense as the proposed ordinance reduces the amount of City Council actions from 3 under the Government Code's hazardous vegetation abatement process to 2. It also clears up the discrepancy within our Municipal Code, which declares weeds and overgrown vegetation a public nuisance.

Moreover, the proposed ordinance enhances due process by mandating staff to publish notices in the Argus Courier regarding specific properties declared public nuisances. These notices outline the consequences of non-compliance and provide a tentative date for the subsequent public hearing authorizing property liens. Additionally, the ordinance requires the City to disclose the abatement costs for each property on its website at least three days before the hearing, a step not mandated by the Government Code's hazardous vegetation abatement process. These additional noticing requirements contribute to a more transparent and accountable process.

Proposed Ordinance Step by Step Process

1. Staff send specific letters out to the properties with overgrown vegetation that informs them of the City Council public hearing. Staff also publish notice of the public hearing in the Argus.
 - The notice will also inform the property owners about the tentative date for the City Council hearing to lien the properties.
2. City Council conducts the public hearing that declares those specific property addresses are public nuisances and provides the City the jurisdiction to enter on to those properties and abate the fire hazards.
3. City performs the hazardous vegetation abatement on those properties that have not voluntarily removed their hazardous vegetation.
4. Staff post the individualized property costs of the hazardous vegetation abatement on the City's agenda webpage and near Council chambers at least 3 days before the public hearing to lien the properties.
5. City Council conducts the public hearing to lien the properties for the costs of abatement.

The proposed ordinance not only grants authority for the City to promptly address immediate threats to public health, safety, and welfare posed by nuisance lots but also establishes a clear process for such summary abatement actions (PMC Section 10.70.120). While reflecting existing law on summary abatement, Section 10.70.120 explicitly mandates the City to send notice of the abatement work to the property owner within 14 days, affording them the opportunity to challenge the City's actions. This provision enhances the City's ability to conduct emergency work when necessary while simultaneously ensuring greater due process for property owners.

In addition, the proposed ordinance brings transparency to the policy and process, surpassing the Government Code's hazardous vegetation abatement statutes. By codifying the ordinance within

the City's Municipal Code, it provides a clear and accessible framework. Furthermore, this codification allows the public to engage in the decision-making process by offering opportunities to provide input on these amendments, fostering a more inclusive and transparent approach to governance.

Lastly, the proposed ordinance mirrors the city of Palo Alto's hazardous vegetation abatement and rubbish ordinance, which was upheld by the California District Court of Appeal in *Thain v. City of Palo Alto* (1962) 207 Cal.App.2d 173 and is very similar by the process outlined in the Government Code. The Court in *Thain* held that Palo Alto's ordinance was constitutional as it was not void for vagueness, not arbitrary and a valid exercise of the city's police powers and did not constitute a taking.

PUBLIC OUTREACH

This agenda item appeared on the City's tentative agenda document on December 18, 2023 which was a publicly noticed meeting.

COUNCIL GOAL ALIGNMENT

The proposed action supports the following City Council Goals, Objectives, and Workplan Items:

A Safe Community that Thrives

OBJECTIVE 1: maintain and enhance public safety and prepare for emergencies and disasters, through crime and fire prevention and traffic safety.

Workplan Item #74. Evaluate all City facilities, including Police and Fire stations and corporation yard facilities; and develop maintenance and replacement recommendations.

Workplan Item #78. Improve public safety through proactive crime and fire prevention activities.

CLIMATE ACTION/SUSTAINABILITY EFFORTS

The hazardous vegetation abatement program is designed to reduce the spread of wildfire should one occur by reducing the amount of combustible vegetation such as weeds on a parcel. This provides the Fire Department time to respond and put the fire out when it is smaller in size and spread, therefore doing less damage to the environment and property. In turn, it therefore also reduces the spread of wildfire and the carbon emissions produced by wildfire.

ENVIRONMENTAL REVIEW

The proposed ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to:

- A. **Common Sense Exemption.** Notwithstanding the potential of this ordinance to result in reasonably foreseeable physical change in the environment through its regulation and abatement of hazardous vegetation, this ordinance is exempt from the requirements of CEQA pursuant to the commonsense exemption in CEQA Guidelines Section 15061(b)(3) in that CEQA applies only to projects that have the potential for causing a significant effect on the environment and, in accordance with the findings and analysis in this section, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment.

This ordinance would not in and of itself directly impact that environment. Rather, the proposed ordinance imposes regulatory standards for property owners to maintain their hazardous vegetation and to remove combustible material to prevent fires which is already regulated under both the California Fire Code, adopted by the City of Petaluma, and Petaluma Municipal Code Chapter 1.10 “Code Enforcement, Generally.” The removal of overgrown vegetation and rubbish helps protect the environment from potential fires and other hazards that result from accumulation of weeds and trash. Additionally, this ordinance is permitted by state law, Government Code Sections 39501 and 39502.

- B. **CEQA Guideline Section 15308.** This Ordinance is also exempt pursuant to CEQA Guideline Section 15308 (Actions by Regulatory Agencies for Protection of the Environment) as this Ordinance will protect against fires and will not involve mature or scenic trees, except for forestry and fire management purposes. It is a regulatory action that will reduce the start and spread of wildfires and assure maintenance and enhancement of a natural resource in the city.
- C. **CEQA Guideline Section 15304 (Minor Alterations to Land).** This project is also exempt pursuant to CEQA Guideline Section 15304 (Minor Alterations to Land) because the project involves the minor alteration of the condition of land and/or vegetation and there are no cumulative impacts, unusual circumstances or other factors that would make the exemption inapplicable pursuant to CEQA Guidelines section 15300.2.

FINANCIAL IMPACTS

There are no financial impacts associated with adopting the ordinance. Any costs to the City for performing the hazardous vegetation abatement can be recovered as liens and special assessments against the abated properties. This cost recovery process is the same under both the proposed ordinance and the Government Code’s hazardous vegetation abatement process.

ALTERNATIVES

If no action is taken, the City of Petaluma and the Fire Department retain the ability to adhere to the process outlined in Government Code Sections 39520 through 39703.

ATTACHMENTS

1. Proposed Ordinance